

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SUNHONG YIM, JAIME OLARTE, and JOSE
ACUNA individually and on behalf of all others
similarly situated,

Plaintiffs,

-against-

CAREY LIMOUSINE NY, INC. and CAREY
INTERNATIONAL, INC.

Defendants.

Case No.: 14-cv-05883

**NOTICE OF MOTION AND MOTION TO PERMIT BRYAN SCHWARTZ LAW
TO WITHDRAW AS COUNSEL OF RECORD FOR PLAINTIFF SUNHONG YIM**

Bryan Schwartz Law submits its memorandum of law in support of its motion for an order permitting it to withdraw as counsel for record for Plaintiff Sunhong Yim, supported by the Declaration of Attorney Bryan Schwartz, Esq. filed concurrently. Bryan Schwartz Law also requests an *in camera* hearing on this Motion.

PRELIMINARY STATEMENT

BRYAN SCHWARTZ LAW seeks permission to withdraw as counsel to Sunghon Yim pursuant to Eastern District Court Local Rule 1.4. Bryan Schwartz Law believes an actual conflict has arisen or a potential conflict will arise between named Plaintiff Yim, who has not signed the Settlement Agreement filed with the Joint Motion for Preliminary Approval on August 24, 2015, as compared to the two other named Plaintiffs Jose Acuna and Jaime Olarte who Bryan Schwartz Law represents in this case, and the putative class which Bryan Schwartz Law seeks to certify and represent. (Dkt. Nos. 42 & 43). Based, *inter alia*, on New York's and California's Rules of Professional Conduct, Bryan Schwartz Law therefore seeks to withdraw representation from Sunghong Yim at this time.

BACKGROUND

Bryan Schwartz Law has concluded that named Plaintiff Sunhong Yim's interests are in conflict or may become in conflict with the other named Plaintiffs and in conflict with the other members of the putative class who Bryan Schwartz Law is seeking to represent, for reasons outlined in the Declaration of Attorney Bryan Schwartz, Esq. ("Schwartz Declaration") in support of this motion,¹ as well as reasons protected by attorney-client privilege. Additionally, named Plaintiff Sunhong Yim did not sign the Settlement Agreement filed with the Joint Motion for Preliminary Approval of Class Action Settlement filed in this Court on August 24, 2015. In addition to numerous other communications on the subject, and without disclosing the privileged details of attorney-client communications, undersigned counsel formally notified Mr. Yim of the intention to withdraw if Mr. Yim continued to reject the settlement agreement on September 10, 2015.

ARGUMENT

Rule 1.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York governs the withdrawal of counsel. Rule 1.4 provides that "An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court and may not withdraw from a case without leave of the Court granted by order."

Counsel owes a duty of loyalty to his client. *In re Agent Orange Produce Liab. Litig.*, 800 F.2d 14, 19 (2d Cir.1986). Flowing from that duty are the obligations to defer to a client's wishes on major decisions and to maintain client confidentiality. *Id.* The duty of loyalty underlies the restrictions on representing another person whose interests are opposed to those of the client.

Relatedly, an attorney must not continue representation of more than one client in a case when their interests actually conflict. CA Rules 3-310(C)(1)&(2); NY Rule 1.7(a)&(b). Rather, an attorney "shall withdraw from employment" if the "member knows or should know that continued employment will result in violation of these rules or of the State Bar Act." CA Rule 3-700(B)(2); *see also* NY Rule 1.16(b)(1) (same).

¹ Plaintiffs have filed a motion to seal the Schwartz Declaration.

Bryan Schwartz Law owes a duty of loyalty to his clients. However, for reasons disclosed in the Schwartz Declaration, Bryan Schwartz Law has concluded that Sunhong Yim's interests are or may become in conflict with the other named Plaintiffs, who support the settlement, and in conflict with the other members of the class who Bryan Schwartz Law is seeking to represent so they may recover from the settlement. In order to avoid representation of clients with conflicting interests, Bryan Schwartz Law seeks to withdraw from representing Sunhong Yim.

Bryan Schwartz Law also notes that Rule 1.16(c)(7) of the New York Rules of Professional Conduct expressly authorizes withdrawal when "the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively." Because Mr. Yim will not sign the settlement which Bryan Schwartz Law believes is an excellent result for Plaintiffs and the class, the best result possible under the circumstances, the firm seeks to withdraw.

Bryan Schwartz Law has taken reasonable steps to avoid prejudice to Sunhong Yim's rights in this case, including giving due notice to Sunhong Yim of the firm's intention to withdraw representation. CA Rule 3-700(A)(2); NY Rule 1.16(e).

Bryan Schwartz Law should be permitted to withdraw from representing Sunhong Yim under these circumstances, pursuant to, *inter alia*, New York and California Rules of Professional conduct.

CONCLUSION

For the forging reasons, the reasons stated in the Schwartz Declaration, and if permitted oral representations made to this Court *in camera*, the Court should grant Bryan Schwartz Law's motion to withdraw as counsel of record for Sunhong Yim.

DATED: September 11, 2015

BRYAN SCHWARTZ LAW

By: /s/ Bryan J. Schwartz

Bryan J. Schwartz

Attorney for Plaintiffs and the Putative Class

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